

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1220

Introduced by Assembly Member Skinner

February 22, 2013

An act to amend Section ~~1785.15~~ 1785.20 of, and to add Sections ~~Section 1785.10.1 and 1785.20.4~~ to, the Civil Code, relating to consumer credit.

LEGISLATIVE COUNSEL'S DIGEST

AB 1220, as amended, Skinner. Consumer credit reporting: ~~files:~~ ~~inspections:~~ *adverse action*.

Existing law requires a consumer credit reporting agency, upon request and proper identification of any consumer, to allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. Existing law additionally grants a consumer the right to request and receive a written copy of the file. Existing federal law prohibits a consumer credit reporting agency from prohibiting a user of a consumer credit report furnished by the agency from disclosing the contents of the report to the consumer if adverse action has been taken against the consumer by the user based on the report.

~~This bill would require, if a consumer requests a written copy of his or her file, that the consumer receive the same information that is provided to a user of a consumer credit report, unless otherwise specified.~~

The

This bill would make it unlawful for a consumer credit reporting agency to prohibit, or to dissuade or attempt to dissuade, a user of a consumer credit report furnished by the credit reporting agency from providing a copy of the consumer's credit report to the consumer, upon the consumer's request, if the user has taken adverse action against the consumer based upon the report. The On and after July 1, 2014, the bill would require that a contract between a credit reporting agency and a user of a consumer credit report include a statement that federal law prohibits a consumer credit reporting agency from prohibiting a user of consumer credit reports from disclosing a copy or the contents of the report to the user and allows a user to disclose this information to a consumer, as specified. The bill would provide that a contract that violates these provisions is void and that the Attorney General or the district attorney of the county in which a violation of this section occurs may bring a civil action, or intervene in any civil action, to enjoin the enforcement of the contract. authorize the Attorney General, among others, to bring a civil action, for a civil penalty not to exceed \$5,000, against any credit reporting agency for a violation of these provisions.

~~The bill would provide a consumer the right to request and to receive a copy of his or her consumer credit report that is used in an adverse action against the consumer from a user of the report who takes the adverse action. The bill would require that, if a consumer authorizes a consumer credit reporting agency to furnish a consumer credit report for an extension of credit or any other lawful purpose, the user of the consumer credit report provide the consumer a specified notice in this regard.~~

Under existing law, if any person takes any adverse action with respect to any consumer, and the adverse action is based on any information contained in a consumer credit report, the person is required to, among other things, provide written notice of the adverse action to the consumer.

This bill would require that notice to include a specified statement advising the consumer of his or her right to request the contents of, or a copy of, the report from the credit reporting agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1785.10.1 is added to the Civil Code, to read:

1785.10.1. (a) It is unlawful for a consumer credit reporting agency to prohibit in any manner, including, but not limited to, in the terms of a contract enforceable in the state, or to dissuade or attempt to dissuade, a user of a consumer credit report furnished by the credit reporting agency from providing a copy of the consumer's credit report to the consumer, upon the consumer's request, if the user has taken adverse action against the consumer based in whole or in part upon information in the report. ~~A On and after July 1, 2014, any new or renewed contract between a credit reporting agency and a user of a consumer credit report for the provision of consumer credit reports shall include a statement that federal law prohibits a consumer credit reporting agency from prohibiting a user of consumer credit reports from disclosing a copy or the contents of the report to the user consumer if adverse action has been taken by the user based in whole or in part on the report, and allows a user of consumer credit reports to disclose the report, or the contents of the report, to the consumer under those circumstances.~~

~~(b) A contract in violation of this section is void as contrary to public policy. The Attorney General or the district attorney of the county in which a violation of this section occurs may bring a civil action, or intervene in any civil action, to enjoin the enforcement of a contract that violates this section.~~

~~(b) The Attorney General, any district attorney or city attorney, or a city prosecutor in any city or city and county having a full-time city prosecutor, may bring a civil action in any court of competent jurisdiction against any credit reporting agency violating this section for a civil penalty not to exceed five thousand dollars (\$5,000) which may be assessed and recovered in a civil action brought in the name of the people of the State of California.~~

SEC. 2. Section 1785.15 of the Civil Code is amended to read:

1785.15. (a) ~~A consumer credit reporting agency shall supply files and information required under Section 1785.10 during normal business hours and on reasonable notice. If a consumer requests a written copy of his or her file, the consumer shall receive the same information that is provided to a user of a consumer credit~~

1 report unless the consumer specifies otherwise. In addition to the
2 disclosure provided by this chapter and any disclosures received
3 by the consumer, the consumer has the right to request and receive
4 all of the following:

5 (1) Either a decoded written version of the file or a written copy
6 of the file, including all information in the file at the time of the
7 request, with an explanation of any code used.

8 (2) A credit score for the consumer, the key factors, and the
9 related information, as defined in and required by Section
10 1785.15.1.

11 (3) A record of all inquiries, by recipient, that result in the
12 provision of information concerning the consumer in connection
13 with a credit transaction not initiated by the consumer and that
14 were received by the consumer credit reporting agency in the
15 12-month period immediately preceding the request for disclosure
16 under this section.

17 (4) The recipients, including end users specified in Section
18 1785.22, of any consumer credit report on the consumer which the
19 consumer credit reporting agency has furnished:

20 (A) For employment purposes within the two-year period
21 preceding the request.

22 (B) For any other purpose within the 12-month period preceding
23 the request.

24 Identification for purposes of this paragraph shall include the
25 name of the recipient or, if applicable, the fictitious business name
26 under which the recipient does business disclosed in full. If
27 requested by the consumer, the identification shall also include
28 the address of the recipient.

29 (b) Files maintained on a consumer shall be disclosed promptly
30 as follows:

31 (1) In person, at the location where the consumer credit reporting
32 agency maintains the trained personnel required by subdivision
33 (d), if he or she appears in person and furnishes proper
34 identification.

35 (2) By mail, if the consumer makes a written request with proper
36 identification for a copy of the file or a decoded written version
37 of that file to be sent to the consumer at a specified address. A
38 disclosure pursuant to this paragraph shall be deposited in the
39 United States mail, postage prepaid, within five business days after
40 the consumer's written request for the disclosure is received by

1 the consumer credit reporting agency. Consumer credit reporting
2 agencies complying with requests for mailings under this section
3 shall not be liable for disclosures to third parties caused by
4 mishandling of mail after the mailings leave the consumer credit
5 reporting agencies.

6 (3) ~~A summary of all information contained in files on a~~
7 ~~consumer and required to be provided by Section 1785.10 shall~~
8 ~~be provided by telephone, if the consumer has made a written~~
9 ~~request, with proper identification for telephone disclosure.~~

10 (4) ~~Information in a consumer's file required to be provided in~~
11 ~~writing under this section may also be disclosed in another form~~
12 ~~if authorized by the consumer and if available from the consumer~~
13 ~~credit reporting agency. For this purpose, a consumer may request~~
14 ~~disclosure in person pursuant to Section 1785.10, by telephone~~
15 ~~upon disclosure of proper identification by the consumer, by~~
16 ~~electronic means if available from the consumer credit reporting~~
17 ~~agency, or by any other reasonable means that is available from~~
18 ~~the consumer credit reporting agency.~~

19 (e) ~~"Proper identification," as used in subdivision (b) means~~
20 ~~that information generally deemed sufficient to identify a person.~~
21 ~~Only if the consumer is unable to reasonably identify himself or~~
22 ~~herself with the information described above may a consumer~~
23 ~~credit reporting agency require additional information concerning~~
24 ~~the consumer's employment and personal or family history in order~~
25 ~~to verify his or her identity.~~

26 (d) ~~The consumer credit reporting agency shall provide trained~~
27 ~~personnel to explain to the consumer any information furnished~~
28 ~~him or her pursuant to Section 1785.10.~~

29 (e) ~~The consumer shall be permitted to be accompanied by one~~
30 ~~other person of his or her choosing, who shall furnish reasonable~~
31 ~~identification. A consumer credit reporting agency may require~~
32 ~~the consumer to furnish a written statement granting permission~~
33 ~~to the consumer credit reporting agency to discuss the consumer's~~
34 ~~file in that person's presence.~~

35 (f) ~~Any written disclosure by a consumer credit reporting agency~~
36 ~~to any consumer pursuant to this section shall include a written~~
37 ~~summary of all rights the consumer has under this title and, in the~~
38 ~~case of a consumer credit reporting agency that compiles and~~
39 ~~maintains consumer credit reports on a nationwide basis, a toll-free~~
40 ~~telephone number that the consumer can use to communicate with~~

1 the consumer credit reporting agency. The written summary of
2 rights required under this subdivision is sufficient if in substantially
3 the following form:

4 “You have a right to obtain a copy of your credit file from a
5 consumer credit reporting agency. You may be charged a
6 reasonable fee not exceeding eight dollars (\$8). There is no fee,
7 however, if you have been turned down for credit, employment,
8 insurance, or a rental dwelling because of information in your
9 credit report within the preceding 60 days. The consumer credit
10 reporting agency must provide someone to help you interpret the
11 information in your credit file.

12 You have a right to dispute inaccurate information by contacting
13 the consumer credit reporting agency directly. However, neither
14 you nor any credit repair company or credit service organization
15 has the right to have accurate, current, and verifiable information
16 removed from your credit report. Under the Federal Fair Credit
17 Reporting Act, the consumer credit reporting agency must remove
18 accurate, negative information from your report only if it is over
19 seven years old. Bankruptcy information can be reported for 10
20 years.

21 If you have notified a consumer credit reporting agency in
22 writing that you dispute the accuracy of information in your file,
23 the consumer credit reporting agency must then, within 30 business
24 days, reinvestigate and modify or remove inaccurate information.
25 The consumer credit reporting agency may not charge a fee for
26 this service. Any pertinent information and copies of all documents
27 you have concerning an error should be given to the consumer
28 credit reporting agency.

29 If reinvestigation does not resolve the dispute to your satisfaction,
30 you may send a brief statement to the consumer credit reporting
31 agency to keep in your file, explaining why you think the record
32 is inaccurate. The consumer credit reporting agency must include
33 your statement about disputed information in a report it issues
34 about you.

35 You have a right to receive a record of all inquiries relating to
36 a credit transaction initiated in 12 months preceding your request.
37 This record shall include the recipients of any consumer credit
38 report.

39 You may request in writing that the information contained in
40 your file not be provided to a third party for marketing purposes.

1 You have a right to place a “security alert” in your credit report,
2 which will warn anyone who receives information in your credit
3 report that your identity may have been used without your consent.
4 Recipients of your credit report are required to take reasonable
5 steps, including contacting you at the telephone number you may
6 provide with your security alert, to verify your identity prior to
7 lending money, extending credit, or completing the purchase, lease,
8 or rental of goods or services. The security alert may prevent credit,
9 loans, and services from being approved in your name without
10 your consent. However, you should be aware that taking advantage
11 of this right may delay or interfere with the timely approval of any
12 subsequent request or application you make regarding a new loan,
13 credit, mortgage, or cellular phone or other new account, including
14 an extension of credit at point of sale. If you place a security alert
15 on your credit report, you have a right to obtain a free copy of your
16 credit report at the time the 90-day security alert period expires.
17 A security alert may be requested by calling the following toll-free
18 telephone number: (Insert applicable toll-free telephone number).
19 California consumers also have the right to obtain a “security
20 freeze.”

21 You have a right to place a “security freeze” on your credit
22 report, which will prohibit a consumer credit reporting agency
23 from releasing any information in your credit report without your
24 express authorization. A security freeze must be requested in
25 writing by mail. The security freeze is designed to prevent credit,
26 loans, and services from being approved in your name without
27 your consent. However, you should be aware that using a security
28 freeze to take control over who gets access to the personal and
29 financial information in your credit report may delay, interfere
30 with, or prohibit the timely approval of any subsequent request or
31 application you make regarding a new loan, credit, mortgage, or
32 cellular phone or other new account, including an extension of
33 credit at point of sale. When you place a security freeze on your
34 credit report, you will be provided a personal identification number
35 or password to use if you choose to remove the freeze on your
36 credit report or authorize the release of your credit report for a
37 specific party or period of time after the freeze is in place. To
38 provide that authorization you must contact the consumer credit
39 reporting agency and provide all of the following:

- 40 (1) The personal identification number or password.

1 ~~(2) Proper identification to verify your identity.~~

2 ~~(3) The proper information regarding the third party who is to~~
3 ~~receive the credit report or the period of time for which the report~~
4 ~~shall be available to users of the credit report.~~

5 ~~A consumer credit reporting agency must authorize the release~~
6 ~~of your credit report no later than three business days after~~
7 ~~receiving the above information.~~

8 ~~A security freeze does not apply when you have an existing~~
9 ~~account and a copy of your report is requested by your existing~~
10 ~~creditor or its agents or affiliates for certain types of account~~
11 ~~review, collection, fraud control, or similar activities.~~

12 ~~If you are actively seeking credit, you should understand that~~
13 ~~the procedures involved in lifting a security freeze may slow your~~
14 ~~application for credit. You should plan ahead and lift a freeze,~~
15 ~~either completely if you are shopping around, or specifically for~~
16 ~~a certain creditor, before applying for new credit.~~

17 ~~A consumer credit reporting agency may not charge a fee to a~~
18 ~~consumer for placing or removing a security freeze if the consumer~~
19 ~~is a victim of identity theft and submits a copy of a valid police~~
20 ~~report or valid Department of Motor Vehicles investigative report.~~
21 ~~A person 65 years of age or older with proper identification shall~~
22 ~~not be charged a fee for placing an initial security freeze, but may~~
23 ~~be charged a fee of no more than five dollars (\$5) for lifting,~~
24 ~~removing, or replacing a security freeze. All other consumers may~~
25 ~~be charged a fee of no more than ten dollars (\$10) for each of these~~
26 ~~steps.~~

27 ~~You have a right to bring civil action against anyone, including~~
28 ~~a consumer credit reporting agency, who improperly obtains access~~
29 ~~to a file, knowingly or willfully misuses file data, or fails to correct~~
30 ~~inaccurate file data.~~

31 ~~If you are a victim of identity theft and provide to a consumer~~
32 ~~credit reporting agency a copy of a valid police report or a valid~~
33 ~~investigative report made by a Department of Motor Vehicles~~
34 ~~investigator with peace officer status describing your~~
35 ~~circumstances, the following shall apply:~~

36 ~~(1) You have a right to have any information you list on the~~
37 ~~report as allegedly fraudulent promptly blocked so that the~~
38 ~~information cannot be reported. The information will be unblocked~~
39 ~~only if (A) the information you provide is a material~~
40 ~~misrepresentation of the facts, (B) you agree that the information~~

1 is blocked in error, or (C) you knowingly obtained possession of
2 goods, services, or moneys as a result of the blocked transactions.
3 If blocked information is unblocked, you will be promptly notified.

4 (2) You have a right to receive, free of charge and upon request,
5 one copy of your credit report each month for up to 12 consecutive
6 months.”

7 SEC. 3.—Section 1785.20.4 is added to the Civil Code, to read:

8 1785.20.4. (a) The federal Fair Credit Reporting Act (15 U.S.C.
9 Sec. 1681 et seq.) prohibits a credit reporting agency from stopping
10 a user of a consumer report from disclosing the contents of the
11 report to the consumer whom it concerns if adverse action is taken
12 based on the report. A consumer has the right to request and to
13 receive a copy of his or her consumer credit report that is used in
14 an adverse action against the consumer from a user of the report
15 who takes the adverse action against the consumer.

16 (b) If a consumer authorizes a consumer credit reporting agency
17 to furnish a consumer credit report for an extension of credit or
18 any other lawful purpose, the user of the consumer credit report
19 shall notify the consumer orally and in writing, in substantially
20 the form provided below, of the following:

21
22 “You have authorized us to obtain a copy of your credit report
23 as part of an application for credit or for some other lawful purpose.
24 If we take adverse action on your application and our decision is
25 based in whole or in part upon your credit report, you have a right
26 to obtain a copy of the report from us that we receive from the
27 consumer credit reporting agency. Neither state nor federal law
28 prevents you from obtaining a copy of your credit report from us
29 under those circumstances.”

30 SEC. 2. Section 1785.20 of the Civil Code is amended to read:

31 1785.20. (a) If any person takes any adverse action with respect
32 to any consumer, and the adverse action is based, in whole or in
33 part, on any information contained in a consumer credit report,
34 that person shall do all of the following:

35 (1) Provide written notice of the adverse action to the consumer.
36 *consumer that includes the following statement:*

37
38 “We have taken adverse action on your application and our
39 decision is based in whole or in part upon your credit report. You
40 have a right to request from us the contents of the report, or a copy

1 *of the credit report itself, that we received from the consumer credit*
2 *reporting agency. Neither state nor federal law prevents you from*
3 *obtaining the contents of your credit report that we received about*
4 *you, or a copy of the credit report itself, from us under those*
5 *circumstances.”*
6

7 (2) Provide the consumer with the name, address, and telephone
8 number of the consumer credit reporting agency which furnished
9 the report to the person.

10 (3) Provide a statement that the credit grantor’s decision to take
11 adverse action was based in whole or in part upon information
12 contained in a consumer credit report.

13 (4) Provide the consumer with a written notice of the following
14 rights of the consumer:

15 (A) The right of the consumer to obtain within 60 days a free
16 copy of the consumer’s consumer credit report from the consumer
17 credit reporting agency identified pursuant to paragraph (2) and
18 from any other consumer credit reporting agency which compiles
19 and maintains files on consumers on a nationwide basis.

20 (B) The right of the consumer under Section 1785.16 to dispute
21 the accuracy or completeness of any information in a consumer
22 credit report furnished by the consumer credit reporting agency.

23 (b) Whenever credit or insurance for personal, family, or
24 household purposes involving a consumer is denied or the charge
25 for such credit is increased either wholly or in part because of
26 information obtained from a person other than a consumer credit
27 reporting agency bearing upon consumer’s credit worthiness or
28 credit standing, the user of that information shall, within a
29 reasonable period of time, and upon the consumer’s written request
30 for the reasons for that adverse action received within 60 days after
31 learning of the adverse action, disclose the nature and substance
32 of the information to the consumer. The user of the information
33 shall clearly and accurately disclose to the consumer his or her
34 right to make such a written request at the time the adverse action
35 is communicated to the consumer.

36 (c) No person shall be held liable for any violation of this section
37 if he or she shows by a preponderance of the evidence that at the
38 time of the alleged violation he or she maintained reasonable
39 procedures to assure compliance with this section.

- 1 (d) Nothing in this chapter shall excuse compliance with the
- 2 requirements of Section 1787.2.

O